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January 13, 2021

Hon. Diane Gujarati, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Central Islip, NY 11201

***Re: Capricorn Management Systems, Inc. v. Government Employees
Insurance Co., 15-cv-02926-DRH-SIL (the "Action")***

Dear Judge Gujarati:

This Joint Status Report is respectfully submitted on behalf of Plaintiff Capricorn Management Systems, Inc. ("Capricorn"), Counterclaim-Defendant Charles M. Silberstein ("Dr. Silberstein") and Defendant Government Employees Insurance Company ("GEICO") (collectively, the "Parties"), pursuant to Your order dated December 14, 2020.

Case Status

This matter was commenced on May 20, 2015. All discovery has been completed and motions for summary judgment have been made and decided. Following those motions, Magistrate Judge Steven I. Locke, by order dated July 28, 2020 ("July 28 Order") (ECF No. 145), accepted and entered the Joint Pre-Trial Order submitted by the Parties (ECF No. 144). The following claims and their associated defenses remain for trial:

- (i) Count I of Plaintiff's Amended Complaint (ECF No. 55) for breach of a Lease and Royalty Agreement between Capricorn and GEICO; and
- (ii) GEICO's Counterclaim Count III of the Counterclaims in GEICO's First Amended Answer (ECF No. 59), for breach of a Non-Disclosure Agreement.

By virtue of the July 28 Order, the Action was submitted to the trial judge, Hon. Denis R. Hurley, for further proceedings. On November 3, 2020, Judge Hurley scheduled a "Final Pretrial & Settlement Conference" for November 24, 2020 and directed the Parties to submit their respective settlement positions on or before November 17, 2020, which the Parties did, each filing under seal (ECF Nos. 149 and 150).

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The Final Pre-Trial Settlement Conference was initially adjourned by the Court to December 8, 2020. By order dated December 7, 2020, Judge Hurley cancelled the Final Pre-Trial Settlement Conference and ordered that a new date for same be scheduled in the future.

On December 8, 2020, the Action was re-assigned to Your Honor. No pre-trial settlement conference has been conducted.

Capricorn has demanded a trial by jury. Capricorn's owners are octogenarians and seek a trial as soon as practicable, understanding of course the difficulties presented by the Covid-19 Pandemic and the demands on the Court.

Summary of the Parties' Joint Pre-Trial Order

Further details regarding the background and status of this Action are set forth in the Joint Pre-Trial Order (ECF No. 144). The Joint Pre-Trial Order: (i) sets forth the procedural history of the Action (ECF No. 144 at 3-5); (ii) includes the Parties' positions with respect to the issues remaining for trial (ECF No. 144 at 5-8); (iii) contains the Parties' summaries of the remaining claims and defenses, inclusive of the relevant authorities upon which the Parties will rely (ECF No. 144 at 9-14); (iv) sets forth the Parties' positions on whether the trial of the Action should be before the bench or before a jury (ECF No. 144 at 14); (v) sets forth the Parties' positions regarding consent to trial before the presiding Magistrate Judge (ECF No. 144 at 15); (vi) submits the Parties' stipulations of law and facts (ECF No. 144-1); (vii) submits the Parties' lists of all fact and expert witnesses (ECF No. 144 at 15); (viii) identifies the Parties' lists of deposition testimony that will be offered in the Action, with the reservation of the Parties' rights to offer additional deposition testimony for the purpose of cross-examination, impeachment, or rebuttal (ECF No. 144 at 16); (ix) identifies the exhibits that will be presented, and any objections to same (ECF No. 144 at 16, ECF No. 144-2, and ECF No. 144-2), reserving the Parties' rights to offer additional exhibits for the purpose of cross-examination, impeachment, or rebuttal (ECF No. 144 at 16); and, (x) contains the Parties' estimates of the days needed for trial (ECF No. 144 at 17).

As detailed in the Joint Pre-Trial Order, the Parties disagree about the scope of issues remaining for trial (ECF No. 144 at 5-7) and what damages theories and evidence are properly admitted at trial (ECF No. 144 at 10, 12; ECF No. 144-2 at 31-32). GEICO respectfully suggests that the Parties use the next several months, during which time conducting a civil jury trial would be impractical due to the ongoing pandemic, to brief motions *in limine* and resolve those remaining pre-trial issues. Plaintiff disagrees, noting that this case has already endured substantial summary judgement and other pre-trial motions, which have been resolved, and that remaining issues concerning scope and evidence can and should be properly addressed at the trial itself.

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Should Your Honor require further information by way of background, the Parties are available to answer any inquiries you may have and/or to appear at a rescheduled Final Pre-Trial Settlement Conference at the Court's convenience.

Respectfully submitted,

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